

REMARKS

In response to the Office Action mailed March 23, 2006¹, Applicants respectfully request reconsideration. Claims 1-24 and 26-30 are pending in the application of which claims 1, 11, 21, 22, and 26 are independent. Claims 1, 11, 21, 22 and 26 are amended in the foregoing amendments.

Double Patenting Rejection

In the Office Action mailed March 23, 2006, the Examiner maintained the double patenting rejection of the Office Action mailed June 15, 2005, where claims 1-25 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-10, 13-22, and 25-28 of copending Application No. 09/759,697. Applicants request that the Examiner continue to hold the double patenting rejection in abeyance until claims 1-24 and 26-30 are otherwise allowable.

Rejections Under 35 U.S.C. § 101

In the Office Action mailed March 23, 2006, the Examiner rejected claims 1-24 as being directed to non-statutory subject matter stating that, "the claims represent non-functional descriptive material that is not capable of producing a useful result, and hence represent only abstract ideas." (Office Action at 2). Applicants disagree that their claims describe non-functional descriptive material. Functional descriptive material consists of data structures and computer programs which impart functionality when employed as a computer component. M.P.E.P § 2106.01 (Rev 5, Aug 2006). Applicants claims include functional steps such as "accessing a field value" and

¹ The Office Action may contain statements characterizing the related art, case law, and claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Office Action.

describing what occurs "during compilation." Since accessing memory and production of codes generates a useful result, Applicants respectfully request the withdrawal of the rejection of claim 1 based on 35 U.S.C. § 101. Remaining independent claims 11, 21, and 22, have been amended to contain similar elements. For the reasons stated above with respect to claim 1, these claims, and claims 2-10, 12-20, and 22-24, which depend therefrom, are also allowable under 35 U.S.C. § 101.

Rejections Under 35 U.S.C. § 102

In the Office Action mailed March 23, 2006, the Examiner rejected claims 1, 11, 21, and 22 as being anticipated by Linked list code examples from *Data Structures and other Objects Using C++* by Main and Savitch (1997), hereinafter "Main". Applicants respectfully request proof that the code printed on 3/14/06 from www.cs.appstate.edu by the Office was publicly available prior to Applicants' date of invention. The Office has not produced copies of the relevant pages of Main referring to the code in question. Accordingly, Applicants traverse the use of the code examples relied on by the Office as there is no proof they are prior art.

In any event, Applicants claims patentably distinguish over Main. To properly establish that a prior art reference anticipates a claimed invention under 35 U.S.C. § 102, each and every element of the claims in issue must be found, either expressly described or under principles of inherency, in the single prior art reference. Applicants respectfully submit that claims 1, 11, 21, and 22 contain at least two elements not disclosed by Main.

First, Main does not disclose or suggest "accessing an option value not stored in the defined fields in the object using expressions of the same syntactic form." Main

shows that the bag class contains a linked list of items, a head pointer for the linked list, and a many_nodes field which contains the number of nodes on the list. (See Main; class Bag). The many_nodes defined field in the bag class is accessed using the *direct* member selection operator. For example, the Bag::operator +=() function contains the reference "addend.many_nodes" to access the defined field many_nodes in the addend bag. The data in individual items is accessed using the *indirect* member selection operator. For example the Bag::remove() function contains the reference "target_ptr->data" to access the data in an item. Thus, Main discloses accessing values using different syntactic form (direct and indirect) and teaches the opposite of what is claimed -- "accessing an option value not stored in the defined fields in the object using expressions of the same syntactic form."

Second, Main does not disclose or suggest "during compilation, determining whether at least one of the expressions accesses one of (a) a field value or (b) an option value; and when it is determined that the expression accesses a field value, compiling the expression into a first code for accessing the field value; and when it is determined that the expression accesses an option value, compiling the expression into a second code for accessing the option value." For these reasons, Applicants respectfully request the withdrawal of the rejection of claims 1, 11, 21, and 22 under 35 U.S.C. § 102.

Rejections Under 35 U.S.C. § 103

In the Office Action mailed March 23, 2006, the Examiner rejected claims 1-8, 11-18, 21, 22-24, and 26-30 as being unpatentable over McLennan ("Object-Oriented Programming with [incr Tcl] bluidling Mega-Widgets with [incr Tk]," 1996) in view of

"Main". Applicants respectfully traverse the rejection under 35 U.S.C. § 103 because the Examiner has not established a prima facie case of obviousness.

To establish a prima facie case of obviousness, three basic criteria must be met. First, the prior art reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims. See M.P.E.P. § 2143.03. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention. See M.P.E.P. § 2143. Third, a reasonable expectation of success must exist. See M.P.E.P. § 2143.02. Moreover, each of these requirements must "be found in the prior art, and not based on Applicant's disclosure." M.P.E.P. § 2143.

The Office Action fails to establish a prima facie case of obviousness for at least the reason that the cited references, taken alone or combined, fail to teach each and every element of amended independent claim 1. First, Applicants maintain that neither Main nor McLennan, taken alone or combined, teach "during compilation, determining whether at least one of the expressions accesses one of (a) a field value or (b) and option value; and when it is determined that the expression accesses a field value, compiling the expression into a first code for accessing the field value; and when it is determined that the expression accesses an option value, compiling the expression into a second code for accessing the option value." On page 4 of the Office Action, the Examiner states that McLennan does not disclose defining the option values without preallocation of memory space for the full option values. It follows that McLennan cannot teach a method for compiling references to such values. Main does not disclose

how a reference to non-preallocated memory space within a class would be compiled compared to the compilation of defined field value. Since neither Main nor McLennan teach that references to option values and references to defined fields in a class using the same syntax should be distinguished and compiled into different code, they do not disclose or suggest the “determining” limitation of claim 1.

Second, Applicants respectfully disagree that page 87 teaches “accessing option values without preallocation of memory space for the full option values and defined values using expressions of the same syntactic form” in view of Main. (See Office Action at 5). The Examiner stated that McLennan does not teach defining option values without preallocation of memory space for the full option values. (Office Action at 4). As demonstrated in the forgoing arguments, Main does not disclose “accessing option values without preallocation of memory space for the full option values and accessing defined values using expressions of the same syntactic form.” For these reasons, McLennan in view of Main cannot teach this element of claim 1.

For the reasons stated above, the rejection under 35 U.S.C. § 103 of claim 1 as well as the rejection of claims 11, 21, 22, and 26 which contain similar elements, should be withdrawn. In addition, dependent claims 2-10, 12-20, 22-24, and 27-30 are allowable under 35 U.S.C. § 103 at least since they depend from claims 1, 11, 21, and 26.

In view of the foregoing amendments to claims and remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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